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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

KEITH RICHARDSON,

Defendant and Appellant.

B218941

(Los Angeles County
Super. Ct. No. BA353019)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Craig E. Veals, Judge. Affirmed.

Richard Lennon, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H.
Borjon and Sharlene A. Honnaka, Deputy Attorneys General, for Plaintiff and
Respondent.

Following denial of his motions to unseal, quash and traverse the search warrant and to suppress evidence, Keith Richardson pleaded no contest to possession for sale of cocaine (Health & Saf. Code, § 11351). Pursuant to the negotiated plea, the trial court sentenced Richardson to state prison for the lower term of two years. On appeal, Richardson requests that we review the entire search warrant issued in the case, including the sealed portion of the search warrant affidavit with information provided by a confidential informant, to determine whether the trial court erred in denying the motion to suppress. (*People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*)). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

After receiving information from a confidential informant, narcotics officers obtained a search warrant and went to an apartment complex, which was across the street from an elementary school. When Richardson arrived, the officers contacted him and recovered the keys to Unit 14, a small studio apartment. The officers searched Unit 14 and found an unregistered .380 handgun, separately stored ammunition, cocaine powder, rock cocaine, two digital scales, 140 empty baggies, a bullet-proof vest, a photo identification of Richardson, and mail addressed to him. Based on the totality of the circumstances, including the information from the informant, the officers suspected Richardson possessed the powder and rock cocaine for sale.

Richardson was charged by information with unlawful possession of body armor (Pen. Code, § 12370, subd. (a); count 1), possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1); count 2), unlawful possession of ammunition (Pen. Code, § 12316, subd. (b)(1); count 3), possession for sale of cocaine base (Health & Saf. Code, § 11351.5; count 4) and possession for sale of cocaine (Health & Saf. Code, § 11351; count 5). The information specially alleged as to counts 4 and 5 that the offenses were committed within 1,000 feet of an elementary school under Health and Safety Code section 11353.6, subdivision (b).¹ As to all counts, the information specially alleged

¹ At the preliminary hearing, the magistrate found there was insufficient evidence to support the Penal Code section 11353.6, subdivision (b) allegation and dismissed it.

Richardson had previously suffered a serious or violent felony conviction within the meaning of the “Three Strikes” law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

Following the preliminary hearing, Richardson moved to unseal, quash and traverse the search warrant and to suppress the evidence seized from Unit 14 as the fruit of an unlawful search. The trial court then reviewed the search warrant, including the sealed affidavit, in camera and denied the motions after concluding it was properly sealed and supported by probable cause. In making its ruling, the trial court stated, “[T]here is more than ample ground for the sealing of [the search warrant and supporting affidavit]” and “there appears to be no infirmity in the warrant.”²

DISCUSSION

All or any part of a search warrant affidavit may be sealed if necessary to protect the identity of a confidential informant. (Evid. Code, § 1041; *People v. Hobbs, supra*, 7 Cal.4th at p. 971.) “When a defendant seeks to quash or traverse a warrant where a portion of the supporting affidavit has been sealed, the relevant materials are to be made available for in camera review by the trial court.” (*People v. Galland* (2008) 45 Cal.4th 354, 364; *People v. Hobbs, supra*, at p. 963; see Evid. Code, § 915, subd. (b).) “The court should determine first whether there are sufficient grounds for maintaining the confidentiality of the informant’s identity. If so, the court should then determine whether the sealing of the affidavit (or any portion thereof) ‘is necessary to avoid revealing the informant’s identity.’ [Citation.] Once the affidavit is found to have been properly sealed, the court should proceed to determine ‘whether, under the “totality of the circumstances” presented in the search warrant affidavit and the oral testimony, if any, presented to the magistrate, there was “a fair probability” that contraband or evidence of a crime would be found in the place searched pursuant to the warrant’ (if the defendant

² Richardson filed a separate motion seeking the identity of the confidential informant, as well as a motion to set aside the information (Pen. Code, § 995). Both motions were apparently taken off calendar in light of Richardson’s plea agreement.

has moved to quash the warrant) or ‘whether the defendant’s general allegations of material misrepresentations or omissions are supported by the public and sealed portions of the search warrant affidavit, including any testimony offered at the in camera hearing’ (if the defendant has moved to traverse the warrant). [Citation.]” (*People v. Galland, supra*, at p. 364; *People v. Hobbs, supra*, at pp. 972-975.) “““The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” [Citation.]’ [Citations.]” (*People v. Thuss* (2003) 107 Cal.App.4th 221, 235.) When reviewing the denial of a motion to suppress, we must uphold the trial court’s express or implied factual findings if supported by substantial evidence, but use our independent judgment to determine whether the facts found establish probable cause. (*People v. Mikesell* (1996) 46 Cal.App.4th 1711, 1716.) We may not order the suppression of evidence unless federal constitutional standards require us to do so. (*Ibid.*)

We have reviewed the search warrant and affidavit, including the sealed portion of the affidavit. Based on our independent examination of those materials, we conclude it is not reasonably probable Richardson would have prevailed on any aspect of his motion to unseal, quash or traverse the warrant or to suppress the seized evidence. The trial court acted well within its discretion in determining valid grounds existed for maintaining the informant’s confidentiality and sealing a portion of the affidavit was necessary in order to avoid revealing the informant’s identity. We have examined the entire affidavit for possible misleading statements or omissions and found nothing that leads us to suspect any material misrepresentations or omissions were made. Finally, we conclude the affidavit established probable cause for the issuance of the search warrant for Richardson’s apartment. Accordingly, the trial court properly denied Richardson’s motion to unseal, quash, and traverse the warrant and to suppress the seized evidence.

DISPOSITION

The judgment is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.